

## **FMLA for Public Agencies**

There are multiple factors that are considered in determining if FMLA is required to be provided by a LPHA. One is the determination as a public agency which LPHAs meet. Another determination is outlined in d) below and based on number of employees of the entity as outlined. Pertinent subsections are highlighted and links to the online resources are provided. A flowchart also follows.

### **§825.108 Public agency coverage. (Code of Federal Regulations)**

(a) An employer under FMLA includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x). Section 3(x) of the FLSA defines *public agency* as the government of the United States; the government of a State or political subdivision of a State; or an agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. State is further defined in Section 3(c) of the FLSA to include any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) The determination of whether an entity is a public agency, as distinguished from a private employer, is determined by whether the agency has taxing authority, or whether the chief administrative officer or board, etc., is elected by the voters-at-large or their appointment is subject to approval by an elected official.

(c)(1) A State or a political subdivision of a State constitutes a single public agency and, therefore, a single employer for purposes of determining employee eligibility. For example, a State is a single employer; a county is a single employer; a city or town is a single employer. Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

(2) The Census Bureau takes a census of governments at five-year intervals. Volume I, Government Organization, contains the official counts of the number of State and local governments. It includes tabulations of governments by State, type of government, size, and county location. Also produced is a universe list of governmental units, classified according to type of government. Copies of Volume I, Government Organization, and subsequent volumes are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, U.S. Department of Commerce District Offices, or can be found in Regional and selective depository libraries, or online at

<http://www.census.gov/govs/www/index.html> or [https://www.census.gov/library/publications/time-series/statistical\\_abstracts.html](https://www.census.gov/library/publications/time-series/statistical_abstracts.html). For a list of all depository libraries, write to the Government Printing Office, 710 N. Capitol St. NW., Washington, DC 20402.

(d) All public agencies are covered by the FMLA regardless of the number of employees; they are not subject to the coverage threshold of 50 employees carried on the payroll each day for 20 or more weeks in a year. However, employees of public agencies must meet all of the requirements of eligibility, including the requirement that the employer (e.g., State) employ 50 employees at the worksite or within 75 miles.

<https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=abbd92cdf37c5d32de741cc5ccc1e81&rgn=div5&view=text&app;node=29:3.1.1.3.54&idno=29#sp29.3.825.a>

## **Government Organization; 2002 Census of Governments**

4. Special district governments—All organized local entities other than the four categories listed above, authorized by State law to provide only one or a limited number of designated functions, and with sufficient administrative and fiscal autonomy to qualify as separate governments; known by a variety of titles, including districts, authorities, boards, commissions, etc., as specified in the enabling state legislation.

<https://www.census.gov/prod/2003pubs/gc021x1.pdf> (page 82)

### **Substantial Autonomy**

This requirement is met where, subject to statutory limitations and any supervision of local governments by the state, an entity has considerable fiscal and administrative independence.

Fiscal independence generally derives from power of the entity to determine its budget without review and detailed modification by other local officials or governments, to determine taxes to be levied for its support, to fix and collect charges for its services, or to issue debt without review by another local government. Administrative independence is closely related to the basis for selection of the governing body of the entity. Accordingly, a public agency is counted as an independent government if it has independent fiscal powers and in addition (1) has a popularly elected governing body; (2) has a governing body representing two or more state or local governments; or (3) even in the event its governing body is appointed, performs functions that are essentially different from those of, and are not subject to specification by, its creating government(s).

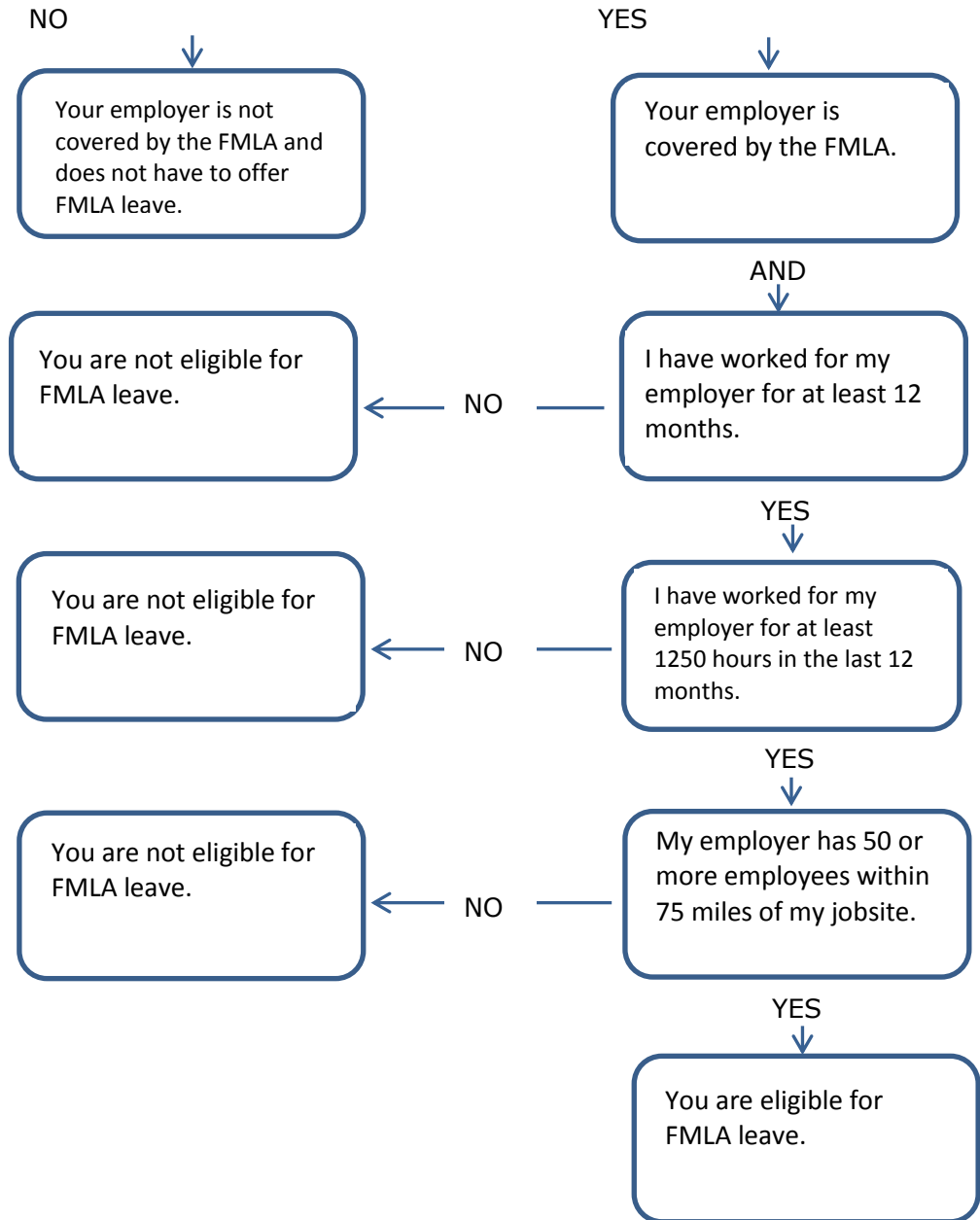
Conversely, separate existence is not attributed to entities which lack either fiscal or administrative independence. Some local government agencies having considerable fiscal autonomy are therefore not counted as governments, but are classified as dependent agencies of another government, where one or more of the following characteristics is present:

1. Control of the agency by a board composed wholly or mainly of parent government officials.
2. Control by the agency over facilities that supplement, serve, or take the place of facilities ordinarily provided by the creating government.
3. Provision that agency properties and responsibilities revert to the creating government after agency debt has been repaid.
4. Requirement for approval of agency plans by the creating government.
5. Legislative or executive specification by the parent government as to the location and type of facilities the agency is to construct and maintain.
6. Dependence of an agency for all or a substantial part of its revenue on appropriations or allocations made at the discretion of another state, county, municipal, township, school district, or special district government.
7. Provision for the review and the detailed modification of agency budgets by another local government. However, county review of agency budgets in connection with statutory limitations on tax rates is not, by itself, sufficient to establish lack of fiscal autonomy.

<https://www.census.gov/prod/2003pubs/gc021x1.pdf> (page 11)

# Are you Eligible for FMLA Leave?

Do you work for an employer who has 50 or more employees OR  
Do you work for a public agency, elementary, or secondary school?



Family and Medical Leave Act (FMLA)